# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CRIMINAL APPEAL No. 457 of 1989

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DAYASWAROOP BHAILALBHAI SHAH - Appellant(s)**

**Versus**

**DILIPBHAI SOMABHAI PATEL & 1 - Opponent(s)**

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**Appearance :**

MR SUNIL MEHTA FOR MR. SK BUKHARI for Appellant(s) : 1,
MR KIRTIDEV R DAVE for Opponent(s) : 1,
Mr. Prachhak, A.P.P. for Opponent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE MD SHAH**

**Date : 20/12/2005**

**ORAL JUDGMENT**

1. The acquittal of the respondent no.1 of the offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, recorded by the learned

Judicial Magistrate, First Class, Jambusar, in Criminal Case no.70 of 1984 vide judgment and order dated 1-8-1988 is the subject matter of challenge in the present appeal, which is filed under Section 378(4) of the Code of Criminal Procedure, 1973.

2. The prosecution case, briefly stated, is to the effect that on 22-11-1983 at 9.20 a.m.the complainant Dayaswaropp Bhailalbhai Rav, Food Inspector, Jambusar Nagar Panchayat, had purchased 6.600 mililitres of buffalo milk from the respondent no.1-accused by paying Rs.1.80ps.in presence of certain witnesses, It is further the prosoecution case that thereafter, after following the due process of law, samples of the said milk were filled in three different bottles and after applying the required seal, these bottles were sent to the Public Analyst, Baroda, for necessary analysis. Upon receipt of the requisite report from the Public Analyst, Baroda, the complainant having found that the samples were reported to be adulterated, on the basis of such report of the Public Analyst, lodged complaint against the respondent no.1-accused on January 1, 1984 after obtaining necessary sanction from the Local Health Authority. Thereafter, the respondent no.1 came to be charge-sheeted for the

offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954. The charge Exh.5 under Sections 7 and 16 of the Prevention of Food Adulteration Act, was framed against the respondent no.1 which was read over and explained to the respondent no.1-accused who pleaded not guilty to the charge and claimed to be tried. To prove its case against the respondent no.1, the prosecution has examined the complainant, Panchas and other witnesses. The prosecution has also produced documentary evidence such as complaint lodged by the complainant at Exh.1, the Panchnama at Exh.8 sanction to prosecute the respondent no.1 at Exh.16 etc. After recording of the evidence of prosecution witnesses was over, the learned Magistrate had recorded the statement of the respondent no.1 under Section 313 of the Criminal Procedure Code. In his further statement the respondent no.1 claimed that the case of the prosecution against him was false. On the defence side, the respondent no.1-accused had examined one Gopal Jethaji at Exh.57. On appreciation of evidence adduced by the prosecution, the learned Magistrate has disbelieved the case of the prosecution and acquitted the respondent no.1 by judgment and order dated 1-8-1988, giving rise to the present appeal.

3. Mr.S.K.Bukhari, learned Counsel for the appellant

has submitted that the learned Magistrate has not appreciated the evidence in its proper perspective and has committed error in acquitting the accused. According to him, the lower Court has erred in holding that the accused was carrying milk for his newly born child who was in the hospital though there was a specific statement made by the accused that he was carrying buffalo milk. Mr. Bukhari has in his submission also attempted to demonstrate that the Food Inspector had complied with the provisions of the Act of 1954 and the provisions of the Prevention of Food Adulteration Rules, 1955 scrupulously. According to him, the report of the Public Analyst is conclusive evidence that the sample of milk in question was adulterated and therefore, the offence having been proved beyond reasonable doubt, the accused ought not to have been acquitted by the learned Magistrate.

4. On the other hand, Mr.K.R.Dave, learned Advocate for the respondent no.1-accused while supporting the judgment passed by the learned J.M.F.C. submitted that there is no illegality or imprpopriety in the findings recorded by the learned Magistrate. The learned Counsel extensively referred to the evidence of complainant himself and pleaded that in view of material contradictions appearing in his own evidence, as also that of the witnesses, no

case was made out against respondent no.1. The learned Counsel highlighted the improbability appearing in the prosecution case and submitted that the acquittal recorded by the learned Magistrate should not be set aside in the present acquittal appeal. He finally submitted that the view taken by the learned Magistrate is not only reasonable but supported by evidence on record. and therefore, there being no substance in this appeal, the same should be dismissed.

5. Heard the learned Counsel for the respective parties and taken into consideration the evidence on record. In the instant case, the complainant in his evidence Exh.5 has clearly stated that on the day in question he was purchasing and collecting samples of milk from different vendors. It is also not in dispute that the complainant has not examined any independent witness to show that the vessel in which the milk was purchased was properly cleaned. It has also come out in the evidence of the Public Analyst Exh.43 that freezing test which is required to be conducted to ascertain whether there were contents of water in the milk or that the milk was adulterated was not carried out. The Public Analyst has also admitted in his evidence that the sample of milk in question upon analysis was found to be conforming to

the standards if the sample of milk was cow's milk which is the case of the respondent accused in his defence. The respondent accused in his defence has categorically stated that the milk he was carrying was being taken to the hospital for feeding his new born child and his wife and that it was cow's milk. The evidence of defence witnesses at Exh.57 and 58 supports this stand of the respondent accused, and therefore, there is no reason to disbelieve the same. There is no evidence on record to show that while taking the samples two Panchas as required were kept present or that Panchas were not available even though efforts were made by the complainant to secure presence of the Panchas and as such there is non compliance of Section 10 and 14 of the Act. The Public Analyst in his evidence has also admitted that the samples of milk in question were examined by his assistant, however, the complainant has not chosen to examine the said assistant, and therefore, the report of the Public Analyst Exh.17 cannot be believed. The complainant has also not intimated the Health Authority the details with regard to submission of samples for analysis to the Punlic Analyst as required under the Rules and there is also no explantion offered by him in this regard. Thus, on overall apppreciation of the evidence, the evidence of the complainant is not free

from doubt.

6. Viewed in the light of the above evidence on record, it is crystal clear that the appellant has failed in rebutting the legal presumptions made by the learned Magistrate in giving benefit of doubt to the respondent no.1-accused. I have carefully examined the reasons which weighed with the learned Magistrate in passing the judgment and order under challenge and am of the firm opinion that there is no infirmity in the reasons assigned by the learned Magistrate in acquitting the respondent no.1-accused. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Counsel for the appellant has failed to dislodge the reasons given by the learned Judge in order to convince me to take the view contrary to the one already taken by the learned Magistrate.

7. For the foregoing reasons, the appeal fails and is dismissed.

(M.D.Shah,J.)

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